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10 Attorneys for Plaintiff People of the
State of California *ex rel.* Maureen Gorsen,
11 Director, Department of Toxic Substances Control

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN LUIS OBISPO
15

16 PEOPLE OF THE STATE OF CALIFORNIA *ex*
rel. Maureen Gorsen, Director, Department of
17 Toxic Substances Control,

18 Plaintiff,

19 v.

20 JOSLYN SUNBANK COMPANY LLC,
a California Corporation,

21 Defendant.
22

Case No.: CV 070208

~~[PROPOSED]~~ FINAL
JUDGMENT AND PERMANENT
INJUNCTION PURSUANT TO
STIPULATION

23 Plaintiff the People of the State of California *ex rel.* Maureen Gorsen, Director of the
24 Department of Toxic Substances Control ("Plaintiff" or the "Department") and Defendant Joslyn
25 Sunbank Company LLC ("Defendant" or "Sunbank"), having consented to the entry of this Final
26 Judgment and Permanent Injunction Pursuant to Stipulation ("Final Judgment") prior to the
27 taking of any proof and without a trial or adjudication of any fact or law herein; and
28

The Court having considered the pleadings, which consist of the Complaint, the parties'

FILED

MAR 28 2007

SAN LUIS OBISPO SUPERIOR COURT
BY *L. Votley*
L. Votley, Deputy Clerk

1 Stipulation for Entry of Final Judgment and Permanent Injunction, and the proposed Final
2 Judgment and Permanent Injunction Pursuant to Stipulation; and good cause appearing therefor,

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

4 **JURISDICTION AND VENUE**

5 1. Jurisdiction exists over this matter pursuant to Health & Safety Code sections
6 25181, 25189, and 25189.2. Venue is proper pursuant to Health & Safety Code section 25183.

7 **APPLICABILITY**

8 2. The provisions of the Final Judgment, and the underlying Stipulation for Entry of
9 Final Judgment and Permanent Injunction (which is attached hereto as Exhibit 1 and
10 incorporated by reference), shall apply to and be binding on Defendant, its subsidiaries and
11 divisions, its parent companies, its officers and directors, its agents, employees, contractors,
12 consultants, successors, assignees, and representatives, and all persons, partners, corporations
13 and successors thereto, or other entities, acting by, through, under, or on behalf of Defendant, and
14 upon Plaintiff and any successor agency of Plaintiff that may have responsibility for and
15 jurisdiction over the subject matter of this Final Judgment.

16 **INJUNCTION**

17 3. The Enjoined Parties (which include Defendant, its subsidiaries and divisions, its
18 officers and directors, its agents, employees, contractors, consultants, successors, assignees, and
19 representatives, and all persons, partners, corporations and successors thereto, or other entities,
20 acting by, through, under, or on behalf of Defendant), pursuant to Health and Safety Code
21 sections 25181 and 25184, shall do the following:

22 (a) Assess and certify hazardous waste treatment tank units every five years,
23 or prior to expiration of the current service life certification, whichever is shorter, as required by
24 Cal. Code Regs, tit. 22, § 66265.192, subd. (h)(1), and this paragraph.

25 (b) Repair or replace any tank component or tank ancillary equipment that
26 shows signs of compromised integrity, inadequate seismic anchoring, damage, or corrosion
27 within 30 days of deficiency observation, as required by Cal. Code Regs, tit. 22, §§ 66265.192,
28 66265.196, and this paragraph. In the event of such deficiency observation, Sunbank shall

1 immediately take this equipment out of service until repaired or replaced, as required by Cal.
2 Code Regs, tit. 22, § 66265.196 and this paragraph.

3 (c) Refrain from any on-site treatment of hazardous waste except in the
4 manner specified by Health and Safety Code section 25201 and this paragraph as follows:

5 (1) Refrain from treating cyanide filters or other cyanide waste without
6 appropriate authorization from, and except in a manner expressly approved by, the Department.

7 As of March 15, 2007, the Department has not authorized Sunbank to treat cyanide waste on-site.

8 (2) Refrain from treating other plating operations waste without on-site
9 treatment authorization from the Department or the Certified Unified Program Agency
10 ("CUPA"), as appropriate.

11 (d) Sunbank shall avoid accumulating chemical wastes, including long- or
12 short-term crystal formation and liquid storage, in, below, or around floorboards, as required by
13 this paragraph. In addition, Sunbank shall do the following:

14 (1) Clean up any leak or spill when it occurs, as required by Cal. Code
15 Regs, tit. 22, § 66265.31 and this paragraph;

16 (2) Clean plating floors at least once weekly, and include in both the
17 training plan and operating procedures the method and process for cleaning the floor weekly;

18 (3) Treat or store plating floor washdown water and ship accumulated
19 washdown water off-site within 90 days of generation as authorized under the HWCL; and

20 (4) Within ninety (90) days after the entry of the Final Judgment,
21 install improvements in locations identified in Exhibit C to the Stipulation for Entry of Final
22 Judgment and Permanent Injunction, which is attached and incorporated by this reference. The
23 improvements to be installed are designed to minimize and, until cleaned up, contain, leaks,
24 drips, or spills of plating chemical solutions to the floor. The improvements are as follows:

25 (i) Install an additional flowing rinse tank on plating tank #20
26 in Exhibit C and replace the flowing rinse tank on plating tank #25 in Exhibit C;

27 (ii) Install drip pan(s) under the A-frame(s), with accumulated
28 drainage to be diverted or pumped regularly to either a floor sump or directly to a rinse tank

1 discharge pipe;

2 (iii) Improve plating procedures to allow greater drainage time
3 over plating tanks; and

4 (iv) Install drain boards or their equivalent along working sides
5 of plating tanks that would allow any drag out or draining plating liquids to fall along the inner
6 wall of the drain boards and back into plating tanks.

7 (e) Keep all hazardous wastes in compatible containers or tanks in good
8 condition, properly labeled and securely closed when not filling or emptying, as required by Cal.
9 Code Regs, tit. 22, §§ 66262.34, subd. (f), 66265.171, 66265.173, subd. (a), 66265.194, and this
10 paragraph.

11 (f) Keep any and all incompatible hazardous wastes in separate secondary
12 containment areas, as required by Cal. Code Regs, tit. 22, §§ 66265.193, 66265.199, and this
13 paragraph.

14 (g) Inspect all hazardous waste pipes and tanks daily, and record inspections,
15 including under floorboards, in the wastewater treatment unit, and any other area where
16 hazardous waste is accumulated, treated, or piped, as required by Cal. Code Regs, tit. 22, §
17 66265.195 and this paragraph. Sunbank shall conduct and record such inspections daily, using
18 an inspection log in the form the Department approved in 2005, or install, monitor, and maintain
19 a leak detection system in all applicable areas in lieu of conducting and recording such pipe and
20 tank inspections.

21 (h) Maintain berms, dikes, or walls used to segregate incompatible waste
22 streams in all applicable areas, as required by Cal. Code Regs, tit. 22, § 66265.199 and this
23 paragraph. Should such segregation mechanisms show any evidence of failure and/or
24 compromise, Sunbank shall repair or replace such berms, dikes, and/or walls within 14 days,
25 during which time the affected area will be shut down temporarily, rerouted, or otherwise
26 operated to minimize the chance of incompatible materials mixing until adequate repairs or
27 replacements are made, as required by Cal. Code Regs, tit. 22, § 66265.196 and this paragraph.

28 (i) Maintain existing secondary containment mechanisms for all tanks and

1 tank ancillary equipment, as required by Cal. Code Regs, tit. 22, § 66265.193 and this paragraph.
2 In order to ensure that any leak or spill from any hazardous waste source is adequately contained,
3 Sunbank shall immediately remove (and properly handle) any leaked or spilled material from
4 secondary containment, and remove from service any tank or ancillary equipment for which
5 secondary containment has become structurally compromised until necessary repairs and/or
6 replacements have been made, as required by Cal. Code Regs, tit. 22, § 66265.196 and this
7 paragraph.

8 (j) Follow all timelines and procedures established in the current waste
9 analysis and sampling plan for all wastes handled, accumulated, and treated on-site, as required
10 by Cal. Code Regs, tit. 22, § 66265.13 and this paragraph.

11 (k) Adhere to the current established written training plan mandating training
12 content and frequency for each employee, as required by Cal. Code Regs, tit. 22, § 66265.16 and
13 this paragraph. In addition, Sunbank shall update this training plan within 30 days in the event of
14 a process change, change in employee job specification, or other element which could affect the
15 duties of the personnel responsible for handling the facility's hazardous waste.

16 (l) Allow the Department or the local CUPA to inspect the facility at any time
17 during normal business hours without a warrant under Health & Saf. Code, § 25185, subd. (a).
18 This requirement shall be in effect for a period of five years from the date of entry of the Final
19 Judgment.

20 (m) Maintain and make available to the Department or the CUPA for
21 inspection, for five years from the date of entry of the Final Judgment, a log of (1) floor cleaning
22 (as outlined in subsection (d) above), including estimated volume of washdown water
23 accumulated and information on the management and disposal of that washdown water; and (2)
24 filter maintenance, filter management, and disposal, including dates and manifest numbers
25 documenting disposal, as required by Health & Saf. Code, § 25185, subd. (a)(4) and this
26 paragraph.

27 **MONETARY SETTLEMENT REQUIREMENTS**

28 4. Defendant shall pay Plaintiff the sum of Four Hundred, Ninety-Five Thousand

1 Dollars (\$495,000), in settlement of Plaintiff's claims, as follows:

2 (a) The sum of \$485,000, as and for civil penalties, in two payments. The
3 first payment of \$240,000 is due to Plaintiff within thirty (30) days of entry of Final Judgment,
4 but in any event no later than March 31, 2007. The second and final payment of \$245,000 is due
5 to Plaintiff on or before March 31, 2007. These payments for civil penalties and costs under the
6 Final Judgment shall be made by cashier's check, payable to the California Department of Toxic
7 Substances Control, and mailed to:

8 Cashier
9 Accounting Office
10 Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806.

11 The checks shall bear on their face the phrase "DTSC # HWCA 2005-0946."

12 (b) The sum of \$10,000, in the form of a supplemental environmental project,
13 is due and shall be paid within thirty (30) days of the entry of Final Judgment, but in any event no
14 later than March 31, 2007, by a cashier's check made out to the "Western States Project." This
15 check shall be mailed to:

16 Mr. Tom Fahey
17 Western States Project
1275 West Washington
18 Phoenix, AZ 85007

19 The check shall bear on its face the phrase "Cal. DTSC # HWCA 2005-0946."

20 A photocopy of all checks and payments made pursuant to the Final Judgment shall be
21 sent, at the same time, to

22 Charles A. McLaughlin, Chief
23 State Oversight and Enforcement Branch
Statewide Compliance Division
24 Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

25 Vivian Murai, Staff Counsel
26 Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, MS-23A
27 P.O. Box 806
28 Sacramento, CA 95812-0806
E-mail: vmurai@dtsc.ca.gov

1 and to

2 Laura Zuckerman
3 Deputy Attorney General
4 State of California Department of Justice
5 Attorney General's Office
6 1515 Clay Street, 20th Floor
7 Oakland, CA 94612
8 E-mail: laura.zuckerman@doj.ca.gov

9 Copies sent to Vivian Murai and Laura Zuckerman may be electronic (i.e., Adobe PDF) copies
10 rather than paper copies.

11 **OTHER PROVISIONS**

12 5. **Retention of Jurisdiction.**

13 The Court shall retain jurisdiction of this matter to implement the Final Judgment.

14 6. **Enforcement of Judgment.**

15 Any party may, by motion or order to show cause before the Superior Court of San Luis
16 Obispo County, enforce the terms and conditions contained in this Final Judgment. Where a
17 failure to comply with this Final Judgment constitutes future violations of the HWCL, or other
18 laws independent of this Final Judgment and/or alleged in the Complaint, Plaintiff is not limited
19 to enforcement of this Final Judgment, but may seek in another action, subject to satisfaction of
20 any procedural requirements, including notice requirements, whatever fines, costs, fees,
21 penalties, or remedies are provided by law for failure to comply with the HWCL or other laws.

22 7. **Modification.**

23 This Final Judgment may be modified from time to time by express written agreement of
24 the parties, with the approval of the Court, or by an order of this Court in accordance with law.

25 8. **Entry of Judgment.**

26 The Clerk of the Court is ordered to enter this Final Judgment within five (5) days of the
27 date hercof, and to provide the parties with notice of entry of judgment within ten (10) days of

28 ///

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///

///

1 the entry of this Final Judgment.

2 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

3

4 Dated: March 28, 2007

By: Original signed by Charles Crandall
Judge of the Superior Court

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EXHIBIT 1

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 JAMES HUMES
Chief Deputy Attorney General
3 THOMAS GREENE
Chief Assistant Attorney General
4 THEODORA BERGER
Senior Assistant Attorney General
5 SALLY MAGNANI KNOX
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10 Attorneys for Plaintiff People of the
State of California *ex rel.* Maureen Gorsen,
11 Director, Department of Toxic Substances Control

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13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
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16 **PEOPLE OF THE STATE OF CALIFORNIA *ex***
***rel.* Maureen Gorsen, Director, Department of**
17 **Toxic Substances Control,**

18 Plaintiff,

19 v.

20 **JOSLYN SUNBANK COMPANY LLC,**
a California Corporation,

21 Defendant.
22

Case No.: CV 070208

**STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND
PERMANENT INJUNCTION
(Code of Civil Procedure § 664.6)**

23
24 Plaintiff the People of the State of California *ex rel.* Maureen Gorsen, Director of the
25 Department of Toxic Substances Control ("Plaintiff" or the "Department") and Defendant Joslyn
26 Sunbank Company LLC ("Defendant" or "Sunbank") enter into this Stipulation for Entry of Final
27 Judgment and Permanent Injunction ("Stipulation"), and agree as follows:

28 **1. Sunbank Facility.**

Sunbank, a California corporation, manufactures conduits and thermoplastics for military

1 and aerospace procurement facilities and their contractors at 1740 Commerce Way in Paso
2 Robles, California. At its Paso Robles facility, Sunbank generates and treats large quantities of
3 wastewater from hazardous and corrosive plating solutions, rinse waters, and sludges, including
4 cyanide, chromium, cadmium, copper, and nickel. Sunbank also generates hazardous waste,
5 including cyanide waste, which is extremely hazardous waste under the applicable regulations,
6 and potentially reactive spent plating solutions and rinse waters containing metals and cyanide.

7 **2. Investigation Activities.**

8 On or about June 23, 2005 and July 13, 2005, the Department inspected Sunbank for
9 compliance with the Hazardous Waste Control Law, Health and Safety Code §§ 25100 *et seq.*
10 (the "HWCL"). The Department's inspector alleged violations of the HWCL and the applicable
11 regulations (Cal. Code Regs, tit. 22, Division 4.5, sections 66000 *et seq.*). These alleged
12 violations included, but were not limited to, unauthorized treatment of hazardous wastes,
13 inadequate segregation of incompatible wastes, inadequate secondary containment of wastes,
14 inadequate and incomplete records, and operating the facility in a manner to potentially harm
15 human health and the environment.

16 **3. Violations of Law.**

17 On March 14, 2007, the Department filed a Complaint seeking, among other things,
18 preliminary and permanent injunctive relief and civil penalties against Sunbank pursuant to the
19 HWCL. The Department's complaint, attached as Exhibit A ("Complaint"), alleges that
20 Sunbank violated numerous provisions of the HWCL and the Department's regulations regarding
21 storage, handling, and treatment of hazardous waste at the Paso Robles facility, and requests
22 injunctive relief and penalties against Sunbank. As of January 15, 2006, the Department
23 considers all violations alleged in the Complaint to have been corrected.

24 **4. Agreement to Settle Dispute.**

25 The parties enter into the Stipulation pursuant to a compromise and settlement by
26 mutually consenting to the entry by the Superior Court of San Luis Obispo County ("Court") of
27 the Final Judgment and Permanent Injunction Pursuant to Stipulation in the form attached as
28 Exhibit B ("Final Judgment"), incorporated herein by reference. The Stipulation and Final

1 Judgment were negotiated and executed in good faith and at arms' length, by the Department and
2 by the Danaher Corporation on behalf of Sunbank, to avoid the initiation and continuation of
3 expensive and protracted litigation regarding alleged violations of the Health & Safety Code.

4 **5. Jurisdiction and Venue.**

5 Jurisdiction exists over this matter pursuant to Health & Safety Code sections 25181,
6 25189, and 25189.2. Venue is proper pursuant to Health & Safety Code section 25183.

7 **6. Waiver of Hearing.**

8 Sunbank waives any right to a judicial or administrative hearing in this matter prior to the
9 entry of the Final Judgment.

10 **7. Release/Matters Covered.**

11 The Final Judgment is a final and binding settlement, and release by the Department, of
12 all claims, alleged violations, or causes of action alleged in the Complaint, or which could have
13 been asserted by the Department based on the facts alleged in the Complaint, against Sunbank, its
14 predecessors in interest, and its officers, directors, shareholders, partners, employees,
15 representatives, and agents up through February 7, 2006. The provisions of this paragraph
16 become effective when the Final Judgment is entered and Sunbank makes timely payment of all
17 amounts set forth in Paragraph 10 below. Nothing in the Final Judgment shall constitute or be
18 construed as a satisfaction or release from liability for any conditions or claims arising as a result
19 of past, current, or future operations of Sunbank or Danaher Corporation except as provided
20 herein. The Department reserves the right to initiate further actions as necessary to protect public
21 health or welfare or the environment notwithstanding Sunbank's compliance with the terms of
22 the Final Judgment.

23 **8. Application of Settlement and Injunction.**

24 The injunctive provisions of the Final Judgment are applicable to Sunbank, its
25 subsidiaries and divisions, its officers and directors, its agents, employees, contractors,
26 consultants, successors, assignees, and representatives, and all persons, partners, corporations
27 and successors thereto, or other entities, acting by, through, under, or on behalf of Sunbank
28 (collectively, "Enjoined Parties").

1 **9. Injunctive Relief.**

2 Enjoined Parties, pursuant to Health and Safety Code sections 25181 and 25184, shall do
3 the following:

4 (a) Assess and certify hazardous waste treatment tank units every five years,
5 or prior to expiration of the current service life certification, whichever is shorter, as required by
6 Cal. Code Regs, tit. 22, § 66265.192, subd. (h)(1), and this paragraph.

7 (b) Repair or replace any tank component or tank ancillary equipment that
8 shows signs of compromised integrity, inadequate seismic anchoring, damage, or corrosion
9 within 30 days of deficiency observation, as required by Cal. Code Regs, tit. 22, §§ 66265.192,
10 66265.196, and this paragraph. In the event of such deficiency observation, Sunbank shall
11 immediately take this equipment out of service until repaired or replaced, as required by Cal.
12 Code Regs, tit. 22, § 66265.196 and this paragraph.

13 (c) Refrain from any on-site treatment of hazardous waste except in the
14 manner specified by Health and Safety Code section 25201 and this paragraph as follows:

15 (1) Refrain from treating cyanide filters or other cyanide waste without
16 appropriate authorization from, and except in a manner expressly approved by, the Department.
17 As of March 15, 2007, the Department has not authorized Sunbank to treat cyanide waste on-site.

18 (2) Refrain from treating other plating operations waste without on-site
19 treatment authorization from the Department or the Certified Unified Program Agency
20 ("CUPA"), as appropriate.

21 (d) Sunbank shall avoid accumulating chemical wastes, including long- or
22 short-term crystal formation and liquid storage, in, below, or around floorboards, as required by
23 this paragraph. In addition, Sunbank shall do the following:

24 (1) Clean up any leak or spill when it occurs, as required by Cal. Code
25 Regs, tit. 22, § 66265.31 and this paragraph;

26 (2) Clean plating floors at least once weekly, and include in both the
27 training plan and operating procedures the method and process for cleaning the floor weekly;

28 (3) Treat or store plating floor washdown water and ship accumulated

1 washdown water off-site within 90 days of generation as authorized under the HWCL; and

2 (4) Within ninety (90) days after the entry of the Final Judgment,
3 install improvements in locations identified in Exhibit C, which is attached and incorporated by
4 this reference. The improvements to be installed are designed to minimize and, until cleaned up,
5 contain, leaks, drips, or spills of plating chemical solutions to the floor. The improvements are
6 as follows:

7 (i) Install an additional flowing rinse tank on plating tank #20
8 in Exhibit C and replace the flowing rinse tank on plating tank #25 in Exhibit C;

9 (ii) Install drip pan(s) under the A-frame(s), with accumulated
10 drainage to be diverted or pumped regularly to either a floor sump or directly to a rinse tank
11 discharge pipe;

12 (iii) Improve plating procedures to allow greater drainage time
13 over plating tanks; and

14 (iv) Install drain boards or their equivalent along working sides
15 of plating tanks that would allow any drag out or draining plating liquids to fall along the inner
16 wall of the drain boards and back into plating tanks.

17 (e) Keep all hazardous wastes in compatible containers or tanks in good
18 condition, properly labeled and securely closed when not filling or emptying, as required by Cal.
19 Code Regs, tit. 22, §§ 66262.34, subd. (f), 66265.171, 66265.173, subd. (a), 66265.194, and this
20 paragraph.

21 (f) Keep any and all incompatible hazardous wastes in separate secondary
22 containment areas, as required by Cal. Code Regs, tit. 22, §§ 66265.193, 66265.199, and this
23 paragraph.

24 (g) Inspect all hazardous waste pipes and tanks daily, and record inspections,
25 including under floorboards, in the wastewater treatment unit, and any other area where
26 hazardous waste is accumulated, treated, or piped, as required by Cal. Code Regs, tit. 22, §
27 66265.195 and this paragraph. Sunbank shall conduct and record such inspections daily, using
28 an inspection log in the form the Department approved in 2005, or install, monitor, and maintain

1 a leak detection system in all applicable areas in lieu of conducting and recording such pipe and
2 tank inspections.

3 (h) Maintain berms, dikes, or walls used to segregate incompatible waste
4 streams in all applicable areas, as required by Cal. Code Regs, tit. 22, § 66265.199 and this
5 paragraph. Should such segregation mechanisms show any evidence of failure and/or
6 compromise, Sunbank shall repair or replace such berms, dikes, and/or walls within 14 days,
7 during which time the affected area will be shut down temporarily, rerouted, or otherwise
8 operated to minimize the chance of incompatible materials mixing until adequate repairs or
9 replacements are made, as required by Cal. Code Regs, tit. 22, § 66265.196 and this paragraph.

10 (i) Maintain existing secondary containment mechanisms for all tanks and
11 tank ancillary equipment, as required by Cal. Code Regs, tit. 22, § 66265.193 and this paragraph.
12 In order to ensure that any leak or spill from any hazardous waste source is adequately contained,
13 Sunbank shall immediately remove (and properly handle) any leaked or spilled material from
14 secondary containment, and remove from service any tank or ancillary equipment for which
15 secondary containment has become structurally compromised until necessary repairs and/or
16 replacements have been made, as required by Cal. Code Regs, tit. 22, § 66265.196 and this
17 paragraph.

18 (j) Follow all timelines and procedures established in the current waste
19 analysis and sampling plan for all wastes handled, accumulated, and treated on-site, as required
20 by Cal. Code Regs, tit. 22, § 66265.13 and this paragraph.

21 (k) Adhere to the current established written training plan mandating training
22 content and frequency for each employee, as required by Cal. Code Regs, tit. 22, § 66265.16 and
23 this paragraph. In addition, Sunbank shall update this training plan within 30 days in the event of
24 a process change, change in employee job specification, or other element which could affect the
25 duties of the personnel responsible for handling the facility's hazardous waste.

26 (l) Allow the Department or the local CUPA to inspect the facility at any time
27 during normal business hours without a warrant under Health & Saf. Code, § 25185, subd. (a).
28 This requirement shall be in effect for a period of five years from the date of entry of the Final

1 Judgment.

2 (m) Maintain and make available to the Department or the CUPA for
3 inspection, for five years from the date of entry of the Final Judgment, a log of (1) floor cleaning
4 (as outlined in subsection (d) above), including estimated volume of washdown water
5 accumulated and information on the management and disposal of that washdown water; and (2)
6 filter maintenance, filter management, and disposal, including dates and manifest numbers
7 documenting disposal, as required by Health & Saf. Code, § 25185, subd. (a)(4) and this
8 paragraph.

9 **10. Monetary Settlement.**

10 Sunbank shall pay the Department the sum of Four Hundred, Ninety-Five Thousand
11 Dollars (\$495,000), in settlement of the Department's claims, as follows:

12 (a) The sum of \$485,000, as and for civil penalties, in two payments. The
13 first payment of \$240,000 is due to the Department within thirty (30) days of entry of Final
14 Judgment, but in any event no later than March 31, 2007. The second and final payment of
15 \$245,000 is due to the Department on or before March 31, 2007. These payments under the
16 Final Judgment shall be made by cashier's check, payable to the California Department of Toxic
17 Substances Control, and mailed to:

18 Cashier
19 Accounting Office
20 Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806.

21 The checks shall bear on their face the phrase "DTSC # HWCA 2005-0946."

22 (b) The sum of \$10,000, in the form of a supplemental environmental project,
23 is due and shall be paid within thirty (30) days of the entry of Final Judgment, but in any event no
24 later than March 31, 2007, by a cashier's check made out to the "Western States Project." This
25 check shall be mailed to:

26 Mr. Tom Fahey
27 Western States Project
1275 West Washington
28 Phoenix, AZ 85007

The check shall bear on its face the phrase "Cal. DTSC # HWCA 2005-0946."

1 A photocopy of all checks and payments made pursuant to the Final Judgment shall be
2 sent, at the same time, to

3 Charles A. McLaughlin, Chief
4 State Oversight and Enforcement Branch
5 Statewide Compliance Division
6 Department of Toxic Substances Control
7 8800 Cal Center Drive
8 Sacramento, CA 95826-3200

9 Vivian Murai, Staff Counsel
10 Office of Legal Counsel
11 Department of Toxic Substances Control
12 1001 I Street, MS-23A
13 P.O. Box 806
14 Sacramento, CA 95812-0806
15 E-mail: vmurai@dtsc.ca.gov

16 and to

17 Laura Zuckerman
18 Deputy Attorney General
19 State of California Department of Justice
20 Attorney General's Office
21 1515 Clay Street, 20th Floor
22 Oakland, CA 94612
23 E-mail: laura.zuckerman@doj.ca.gov

24 Copies sent to Vivian Murai and Laura Zuckerman may be electronic (i.e., Adobe PDF) copies
25 rather than paper copies.

26 **11. Notice.**

27 All submissions and notices required by the Stipulation and Final Judgment shall be in
28 writing, and shall be sent to:

The Department:

Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

Sunbank:

Ron Thaele
EHS Coordinator
Joslyn Sunbank Company LLC
1740 Commerce Way
Paso Robles, California 93446

1 Carl Grabinski
2 Director, Environmental Affairs/Corporate Counsel
3 Danaher Corporation
4 1500 Mittel Boulevard
5 Wood Dale, IL 60191

6 All approvals and decisions regarding any matter requiring approvals or decisions under
7 the terms of the Final Judgment shall be communicated in writing. No advice, guidance,
8 suggestions or comments by employees or officials of the Department regarding submittals or
9 notices shall be construed to relieve Sunbank of its obligation to obtain any final written
10 approvals required by the Final Judgment.

11 **12. The Department Not Liable.**

12 Neither the Department nor the State of California or any of its agencies, boards, or
13 departments (collectively, "State Entities") shall be liable for any injury or damage to persons or
14 property resulting from acts or omissions by Sunbank, its directors, officers, employees, parent
15 companies, affiliates, agents, representatives, or contractors in carrying out activities pursuant to
16 the Final Judgment, nor shall the Department or any of the State Entities be held as a party to or
17 guarantor of any contract entered into by Sunbank, its directors, officers, employees, agents,
18 representatives, parent companies, affiliates, or contractors in carrying out activities required
19 pursuant to the Final Judgment.

20 **13. Compliance with Applicable Law.**

21 Sunbank shall implement the terms of the Final Judgment in compliance with all local,
22 State, and federal requirements, including, but not limited to, requirements to obtain permits and
23 to assure worker safety.

24 **14. Access.**

25 Nothing in the Final Judgment is intended to limit in any way the right of entry or
26 inspection that the Department or any other agency may otherwise have by operation of any law.

27 **15. Sampling, Data, and Document Availability.**

28 Sunbank shall permit the Department or its authorized representatives to inspect and copy
all sampling, testing, monitoring, and other data generated by Sunbank or on Sunbank's behalf in
any way pertaining to the Department's regulatory authority under the Health & Safety Code.

1 Retention times for the above records, and extensions thereof, shall be as specified in the
2 applicable statutes and regulations.

3 **16. Integration.**

4 The Stipulation, together with exhibits, constitutes the entire agreement and
5 understanding of the parties with respect to the entire subject matter hereof. No representations,
6 oral or written, express or implied, other than those contained herein have been made by any
7 party hereto. No other agreements not specifically referred to herein, oral or written, shall be
8 deemed to exist or to bind any of the parties. The Stipulation may not be amended or
9 supplemented except as provided for in the Stipulation.

10 **17. Authority to Enter Stipulation.**

11 Each signatory to the Stipulation certifies that he or she is fully authorized by the party he
12 or she represents to enter into the Stipulation, to execute it on behalf of the party represented, and
13 to legally bind that party.

14 **18. Modification of Stipulation and Final Judgment.**

15 Neither the Stipulation nor the Final Judgment may be modified without written
16 stipulation of the parties hereto and approval by the Court.

17 **19. Parties Bound.**

18 The Final Judgment shall apply to and be binding upon Sunbank, its subsidiaries and
19 divisions, its parent companies, its officers and directors, its agents, employees, contractors,
20 consultants, successors, assignees, and representatives, and all persons, partners, corporations
21 and successors thereto, or other entities, acting by, through, under, or on behalf of Sunbank, and
22 upon the Department and any successor agency of the Department that may have responsibility
23 for and jurisdiction over the subject matter of this Final Judgment.

24 **20. Effect of Final Judgment.**

25 Except for the release provided in Paragraph 7, nothing in the Final Judgment shall
26 constitute or be construed as barring the Department, or any other regulatory body, from taking
27 appropriate enforcement actions or otherwise exercising its authority under any law, statute or
28 regulation.

1 **21. Entry of Judgment Required.**

2 The Stipulation shall be null and void, and be without any force or effect, unless the
3 Court enters the Final Judgment in this matter.

4 **22. Governing Law.**

5 The terms of the Final Judgment shall be governed by the laws of the State of California.

6 **23. Retention of Jurisdiction.**

7 The Court shall retain jurisdiction of this matter for, among other things, purposes of
8 interpretation, implementation, modification, and enforcement of the Final Judgment. The Final
9 Judgment shall go into effect immediately upon entry hereof. Entry is authorized immediately
10 upon filing.

11 **24. Counterparts.**

12 The Stipulation may be executed in counterparts, each of which shall be deemed an
13 original, and all such counterparts taken together shall be deemed to constitute one and the same
14 instrument.

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1 **IT IS SO STIPULATED.**

2 DEPARTMENT OF TOXIC SUBSTANCES
3 CONTROL

4
5 Dated: March 16, 2007

6 By: Original signed by Kim F. Wilhelm
7 Kim F. Wilhelm, Division Chief
8 Statewide Compliance Division
9 Department of Toxic Substances Control

10 JOSLYN SUNBANK COMPANY LLC

11
12 Dated: March 16, 2007

13 By: Original signed by Jeff Watson
14 Jeff Watson, President
15 Joslyn Sunbank Company LLC

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1 **APPROVED AS TO FORM:**

2 EDMUND G. BROWN JR.
3 Attorney General of the State of California
4 JAMES HUMES
5 Chief Deputy Attorney General
6 THOMAS GREENE
7 Chief Assistant Attorney General
8 THEODORA BERGER
9 Senior Assistant Attorney General
10 SALLY MAGNANI KNOX
11 Supervising Deputy Attorney General
12 ROSE B FUA
13 Deputy Attorney General
14

15 Dated: March 15, 2007

16 BY: Original signed by Laura Zuckerman
17 LAURA J. ZUCKERMAN
18 Deputy Attorney General

19 Attorneys for Plaintiff
20 People of the State of California *ex rel.*
21 Maureen Gorsen, Director, California
22 Department of Toxic Substances Control

23 WACTOR & WICK LLP

24 Dated: March 19, 2007

25 BY: Original signed by William Wick
26 WILLIAM D. WICK

27 Attorneys for Defendant
28 Joslyn Sunbank Company LLC

EXHIBIT A

FILED

MAR 14 2007

SAN LUIS OBISPO SUPERIOR COURT

BY [Signature]
D. Roncon, Deputy Clerk

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 JAMES HUMES
Chief Deputy Attorney General
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10 Attorneys for Plaintiff PEOPLE OF THE STATE OF
CALIFORNIA *ex rel.* Maureen Gorsen, Director,
11 California Department of Toxic Substances Control

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

CV 070208

15 PEOPLE OF THE STATE OF CALIFORNIA *ex*
16 *rel.* Maureen Gorsen, Director, California
Department of Toxic Substances Control,

Plaintiff,

v.

19 Joslyn Sunbank Company LLC, a California
20 corporation,

Defendant.

CASE NO.

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

(Calif. Health & Saf. Code, §§
25189 and 25189.2)

BY FAX

23 Plaintiff People of the State of California *ex rel.* Maureen Gorsen, Director of the
24 Department of Toxic Substances Control ("DTSC"), alleges as follows.

STATEMENT OF THE CASE

26 1. Defendant Joslyn Sunbank Company, LLC ("Sunbank"), a California corporation,
27 manufactures conduits and thermoplastics for military and aerospace procurement facilities and
28 their contractors at 1740 Commerce Way in Paso Robles, California. At its facility, Sunbank

1 generates and treats large quantities of wastewater from hazardous and corrosive plating
2 solutions, rinse waters, and sludges, including cyanide, chromium, cadmium, copper, and nickel.
3 Sunbank also generates extremely hazardous and potentially reactive spent plating solutions and
4 rinse waters containing metals and cyanide.

5 2. While managing these hazardous and extremely hazardous wastes, Sunbank violated
6 the California Hazardous Waste Control Law, Health and Safety Code sections 25100 *et seq.* (the
7 “HWCL”) by handling hazardous waste in an unsafe and unauthorized manner.^{1/}

8 3. DTSC seeks civil penalties from and injunctive relief against Sunbank for its past
9 violations of the HWCL and of its implementing regulations.

10 PLAINTIFF

11 4. DTSC is a public agency of the State of California. DTSC is the state agency
12 responsible for the administration and enforcement of the HWCL.

13 5. Maureen Gorsen is the Director of DTSC.

14 6. Pursuant to Health & Safety Code sections 25181 and 25182, the Attorney General of
15 the State of California is authorized, at the request of DTSC, to commence an action in the name
16 of the People for civil penalties and injunctive relief under the HWCL. DTSC has asked the
17 Attorney General to apply to this Court for an injunction enjoining Sunbank from violating the
18 HWCL.

19 DEFENDANT

20 7. Sunbank is a “person,” as defined at section 25118. Sunbank is an “owner” and/or
21 “operator,” as defined at California Code of Regulations, tit. 22, section 66260.10.

22 8. When reference is made in this complaint to any act of Sunbank, such allegation shall
23 mean that Sunbank did such acts, or employees or representatives of Sunbank did or authorized
24 such acts, or recklessly failed to adequately or properly supervise, control, or direct Sunbank’s
25 employees or representatives while engaged in the management, direction, operation or control of
26 the affairs of Sunbank, and that they did so while acting within the course and scope of their
27

28 1. Unless otherwise indicated, all section references in this Complaint are to the Health and
Safety Code.

1 employment or agency.

2 JURISDICTION AND VENUE

3 9. This court has jurisdiction pursuant to Cal. Const., art. VI, section 10. Venue is proper
4 under section 25183. The violations of law principally took place at Sunbank's place of business
5 in Paso Robles, California, in San Luis Obispo County.

6 STATUTORY AND REGULATORY BACKGROUND

7 10. The State of California has enacted a comprehensive – “cradle to grave” – statutory
8 and regulatory framework for the generation, management, treatment, transport, storage and
9 disposal of hazardous wastes. The HWCL's implementing regulations specify requirements for
10 the tracking, storage, treatment and disposal of hazardous waste to protect the public from the
11 risks posed by improper management of hazardous wastes. (Cal. Code Regs., tit. 22, §§ 66260.1
12 *et seq.*)

13 11. In 1992, California adopted a tiered permitting scheme for hazardous waste
14 management facilities. (The Wright-Polanco-Lempert Hazardous Waste Treatment Permit
15 Reform Act of 1992, Stats.1992, c. 1345 (A.B.1772).) For example, companies that receive
16 hazardous wastes from other generators are generally subject to more strict requirements than are
17 companies that treat only hazardous waste they generate themselves. Similarly, companies that
18 treat, store, or dispose of highly dangerous hazardous wastes are generally subject to more strict
19 requirements than are companies that handle only minimally hazardous wastes.

20 12. The middle tier of California's tiered permitting scheme for hazardous waste
21 management facilities is known as the permit-by-rule tier. (Cal. Code Regs., tit. 22, §§ 67450.1
22 *et seq.*) It is available to hazardous waste generators who treat certain hazardous wastes by the
23 treatment processes specified in California Code of Regulations, Title 22, section 67450.11. To
24 be deemed to have a permit by rule, the generator must comply with the notification requirements
25 and other requirements of California Code of Regulations, Title 22, sections 67450.1 *et seq.*

26 ENFORCEMENT AUTHORITY UNDER THE HWCL

27 13. The HWCL authorizes the Court to issue civil penalties under two distinct and
28 alternative provisions. Section 25189 creates liability for any negligent or intentional violation of

1 the HWCL. Section 25189.2 is a strict liability provision, which creates liability for any
2 violation of the HWCL or any permit, rule, regulation, standard, or requirement issued or adopted
3 thereunder. (Health & Saf. Code, § 25189.2, subd. (b).) A person may not be held liable for
4 separate civil penalties imposed under sections 25189 and 25189.2 for the same act. (Health &
5 Saf. Code, § 25189.2, subd. (d).)

6 14. Sections 25181 and 25184 authorize and direct the Court to enjoin any ongoing or
7 potential violation of the HWCL.

8 15. Section 25181 provides that when DTSC determines that any person has engaged
9 in, is engaged in, or is about to engage in any acts or practices which constitute or will constitute
10 a violation of any provision of the HWCL or any rule or requirement issued or promulgated
11 thereunder, and when requested by DTSC, the Attorney General may make application to the
12 superior court for an order enjoining such acts or practices, or for an order directing compliance,
13 and upon a showing by DTSC that such person has engaged in or is about to engage in any such
14 acts or practices, a permanent or temporary injunction, restraining order, or other order may be
15 granted.

16 16. Section 25184 provides that in civil actions brought pursuant to the HWCL in
17 which an injunction or temporary restraining order is sought:

18 "it shall not be necessary to allege or prove at any stage of the proceeding that
19 irreparable damage will occur should the temporary restraining order, preliminary
20 injunction, or permanent injunction not be issued; or that the remedy at law is
21 inadequate, and the temporary restraining order, preliminary injunction, or permanent
22 injunction shall issue without such allegations and without such proof."

23 GENERAL ALLEGATIONS

24 17. On or about June 23, 2005, DTSC and the San Luis Obispo County Certified
25 Unified Program Agency ("CUPA") inspected Sunbank's facility for compliance with the
26 HWCL. DTSC's inspector discovered violations of the HWCL. At the conclusion of the
27 inspection, DTSC's inspector provided Sunbank with a summary of violations ("Summary of
28 Violations"). On or about July 13, 2005, DTSC reinspected the facility, including taking

1 samples and investigating the plating bath operations and the tank treatment system.

2 18. On or about September 2, 2005, DTSC sent Sunbank a detailed inspection report
3 indicating its findings for both inspections ("Inspection Report"). The Inspection Report cited
4 Sunbank for certain violations, including some of the violations specified in the Summary of
5 Violations.

6 SPECIFIC ALLEGATIONS

7 FIRST CAUSE OF ACTION

8 (Illegal Treatment of Hazardous Wastes Containing Cyanide)

9 (Health & Saf. Code, § 25201, subd. (a))

10 19. Paragraphs 1 through 18 are realleged as if fully set forth herein.

11 20. Section 25201, subdivision (a), makes illegal any storage, treatment and/or disposal
12 of hazardous waste that is not authorized by DTSC or by statute.

13 21. The HWCL defines treatment (of a hazardous waste) as any method, technique or
14 process designed to change the physical, chemical, or biological character or composition of the
15 hazardous waste. (Health & Saf. Code, § 25123.5.)

16 22. On and/or before June 23, 2005, Sunbank was conducting unauthorized treatment
17 of cyanide-bearing filters by dipping them in bleach and leaving them in the open to dry.
18 Treatment of cyanide filters requires a permit under the Resource Conservation and Recovery
19 Act of 1976, 42 U.S.C. §§ 6901 *et seq.* Filter samples collected on July 13, 2005 had up to
20 10,000 parts per million ("ppm") of cyanide, a level at which it is acutely hazardous and
21 potentially reactive, and were stored next to a structurally compromised sulfuric acid tank,
22 creating a potentially hazardous environment for Sunbank's employees. Acid and cyanide wastes
23 release extremely poisonous hydrogen cyanide gas when mixed. The samples also emitted
24 hydrogen cyanide gas at levels exceeding 5 ppm, above the Occupational Safety & Health
25 Administration's ("OSHA") permissible exposure limit and twice the level at which DTSC
26 requires its own employees to evacuate.

27 23. When DTSC reinspected Sunbank on July 13, 2005, cyanide-bearing filters were
28 still being treated and stored next to the structurally compromised sulfuric acid tank.

1 24. Sunbank violated section 25201(a) in that Sunbank treated cyanide-bearing filters
2 without lawful authorization.

3 25. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
4 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
5 violation occurred or continued.

6 SECOND CAUSE OF ACTION

7 (Failure to Provide Secondary Containment)

8 (Cal. Code Regs., tit. 22, §§ 66265.193 & 66265.196)

9 26. Paragraphs 1 through 25 are realleged as if fully set forth herein.

10 27. California Code of Regulations, Title 22, section 66265.193, subdivision (a),
11 requires that each hazardous waste tank system at a hazardous waste management facility have
12 secondary containment to prevent the release of hazardous waste or constituents to the
13 environment.

14 28. On and/or before July 13, 2005, Sunbank failed to provide secondary containment
15 for two concrete waste collection sumps (collection tanks) under the floorboards in the
16 wastewater treatment area. The two sumps had incompatible waste streams - cyanides and acids.
17 Acid and cyanide wastes release extremely poisonous hydrogen cyanide gas when mixed. If
18 either of these sumps had leaked, cyanide gas could have resulted and presented a serious threat
19 to employees.

20 29. Sunbank violated California Code of Regulations, Title 22, section 66265.193 by
21 failing to provide secondary containment for a filter press used to treat cyanide-bearing wastes.

22 30. On and/or before July 13, 2005, Sunbank also failed to provide secondary
23 containment for the Conditionally Exempt - Limited hydraulic fluid-water separation treatment
24 unit.

25 31. Sunbank used the secondary containment of the Conditionally Exempt - Limited
26 hydraulic fluid-water separation treatment unit for permanent storage of several gallons of
27 hydraulic fluid.

28 32. Sunbank violated California Code of Regulations, Title 22, section 66265.196,

1 which requires that a tank system or secondary containment system from which there has been a
2 leak or spill be removed from service immediately, and the waste removed from the secondary
3 containment system within 24 hours of release.

4 33. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
5 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
6 violation occurred or continued.

7 THIRD CAUSE OF ACTION

8 (Failure to Close Container)

9 (Cal. Code Regs., tit. 22, § 66265.173)

10 34. Paragraphs 1 through 33 are realleged as if fully set forth herein.

11 35. On and/or before June 23, 2005, Sunbank failed to keep a container holding
12 cyanide-bearing filters closed while waste was not being added or removed, as required by
13 California Code of Regulations, Title 22, section 66265.173.

14 36. On July 13, 2005, during the reinspection of Sunbank, the container holding
15 cyanide-bearing filters remained open.

16 37. Cyanide-bearing filters were stored in an open and unlabeled container next to the
17 structurally-compromised sulfuric acid tank. Acid and cyanide wastes release extremely
18 poisonous hydrogen cyanide gas when mixed.

19 38. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
20 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
21 violation occurred or continued.

22 FOURTH CAUSE OF ACTION

23 (Failure to Segregate Incompatible Wastes)

24 (Cal. Code Regs., tit. 22, §§ 66265.177, subd. (c), and 66265.199)

25 39. Paragraphs 1 through 38 are realleged as if fully set forth herein.

26 40. On and/or prior to June 23, 2005, Sunbank stored a container holding cyanide-
27 bearing filters next to a structurally-compromised sulfuric acid tank, in violation of California
28 Code of Regulations, Title 22, section 66265.177, subdivision (c). Acid and cyanide wastes

1 release extremely poisonous hydrogen cyanide gas when mixed. The hydrogen cyanide gas
2 emission readings near the cyanide-bearing filters tested at more than 5 ppm, above OSHA's
3 permissible exposure limit and twice the level at which DTSC requires its own employees to
4 evacuate.

5 41. Sunbank failed to segregate the incompatible acid and cyanide wastes in sumps by
6 means of a dike, berm, wall, or other mechanism capable of preventing mixing of the waste in
7 the event of a spill. These incompatible wastes were sharing the same secondary containment
8 system in the treatment unit area, in violation of California Code of Regulations, Title 22, section
9 66265.199.

10 42. Sunbank violated California Code of Regulations, Title 22, sections 66265.177,
11 subdivision (c), and 66265.199 by its failure to segregate these incompatible wastes.

12 43. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
13 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
14 violation occurred or continued.

15 FIFTH CAUSE OF ACTION

16 (Failure to Minimize the Possibility of a Release)

17 (Cal. Code Regs., tit. 22, § 66265.31)

18 44. Paragraphs 1 through 43 are realleged as if fully set forth herein.

19 45. California Code of Regulations, Title 22, section 66265.31 requires a hazardous
20 waste management facility be "operated to minimize the possibility of a fire, explosion, or any
21 unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents . . .
22 which could threaten human health or the environment."

23 46. On September 29, 2000, a San Luis Obispo CUPA inspection report indicated that
24 "[m]ore frequent and thorough cleaning of the floor below the 'slats' is needed in the plating
25 area." In addition, the report noted that "... [o]ne of the storage pallets west of the plating area
26 was caked with chemicals and requires cleaning" and advised Sunbank to keep all containment
27 pallets free of dried chemical buildup.

28 47. On and/or before June 23, 2005, Sunbank failed to clean spilled plating chemical

1 from the floors in its plating area, allowing plating chemicals, including crystallized cadmium-
2 cyanide to accumulate on large areas of the floor adjacent to an acid tank. Acid and cyanide
3 wastes release extremely poisonous hydrogen cyanide gas when mixed.

4 48. The cadmium-cyanide crystals had a concentration of 29,000 ppm and were caked
5 one inch deep in many areas of the plating floor.

6 49. On and/or prior to both June 23, 2005 and July 13, 2005, Sunbank stored a
7 container holding cyanide-bearing filters next to a structurally-compromised sulfuric acid tank.
8 On July 13, 2005, the hydrogen cyanide gas emission readings near the cyanide-bearing filters
9 tested at more than 5 ppm, above OSHA's permissible exposure limit and twice the level at
10 which DTSC requires its own employees to evacuate.

11 50. On or prior to July 13, 2005, Sunbank failed to segregate incompatible acid and
12 cyanide wastes by means of a dike, berm, wall, or other mechanism capable of preventing mixing
13 of the waste in the event of a spill.

14 51. On July 18, 2002, the San Luis Obispo CUPA found corrosion on Sunbank's
15 waste treatment unit tanks.

16 52. On and/or prior to June 23, 2005, DTSC once again found that Sunbank failed to
17 repair and maintain free from corrosion and leaks the platform of its permit-by-rule treatment
18 tank.

19 53. Sunbank violated California Code of Regulations, Title 22, section 66265.31
20 because it failed to minimize the risk of release of hazardous waste constituents which could
21 threaten human health or the environment.

22 54. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
23 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
24 violation occurred or continued.

25 SIXTH CAUSE OF ACTION

26 (Failure to Stop Using Corroding and Leaking Tank System)

27 (Cal. Code Regs., tit. 22, § 66265.196)

28 55. Paragraphs 1 through 54 are realleged as if fully set forth herein.

1 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
2 violation occurred or continued.

3 EIGHTH CAUSE OF ACTION

4 (Failure to Have Written and Certified Tank Assessments)

5 (Cal. Code Regs., tit. 22, § 66265.192)

6 67. Paragraphs 1 through 66 are realleged as if fully set forth herein.

7 68. California Code of Regulations, Title 22, section 66265.192 and its subparts
8 requires facilities managing hazardous waste in “new tank systems” to “ensure that the
9 foundation, structural support, seams, connections, and pressure controls (if applicable) are
10 adequately designed and that the tank system has sufficient structural strength, compatibility with
11 the waste(s) to be transferred, stored, or treated, and corrosion protection so that it will not
12 collapse, rupture, or fail.” (Cal. Code Regs., tit. 22, § 66265.192, subd. (a).) (“New tank
13 system” is defined in California Code of Regulations, Title 22, section 66260.10.)

14 69. Section 66265.192 also requires facilities managing hazardous waste in “new tank
15 systems” to obtain periodic written assessments, reviewed and certified by an independent,
16 qualified, professional engineer, attesting among other things that all facility tanks have sufficient
17 structural integrity, are acceptable for the transfer, storage, and treatment of hazardous wastes,
18 and are suitably designed to achieve the requirements of California Code of Regulations, Title
19 22, sections 66265.190 *et seq.*

20 70. On and/or before June 23, 2005, Sunbank had not prepared a written, certified tank
21 system assessment for its wastewater treatment system used to treat an average of 300,000
22 gallons per month of electroplating waste containing cyanide, cadmium, chromium and other
23 heavy metals.

24 71. Pursuant to section 66265.192, Sunbank was required to do a tank assessment on its
25 wastewater treatment system every five years beginning in 1993.

26 72. Sunbank failed to conduct a tank assessment in 1998 and in 2003.

27 73. Sunbank violated California Code of Regulations, Title 22, section 66265.192 in
28 that it treated hazardous waste in new tank systems for which it had not prepared a written,

1 certified tank system assessment.

2 74. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
3 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
4 violation occurred or continued.

5 NINTH CAUSE OF ACTION

6 (Failure to Label Container with Required Information)

7 (Cal. Code Regs., tit. 22, § 66262.34, subd. (f))

8 75. Paragraphs 1 through 74 are realleged as if fully set forth herein.

9 76. On and/or before July 13, 2005, Sunbank failed to label the container that held
10 cyanide-bearing filters as required by Title 22, section 66262.34, subdivision (f). The container
11 was not labeled with the words "hazardous waste;" an identification of the hazardous
12 characteristics of the waste in the container; the date on which the accumulation of the hazardous
13 waste started; a description of the physical state of the waste; or the name and address of the
14 facility.

15 77. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
16 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
17 violation occurred or continued.

18 TENTH CAUSE OF ACTION

19 (Inadequate Waste Analysis Plan and Sampling Plan)

20 (Cal. Code Regs., tit. 22, §§ 66265.13 & 67450.3, subd. (c)(8)(A))

21 78. Paragraphs 1 through 77 are realleged as if fully set forth herein.

22 79. California Code of Regulations, Title 22, section 66265.13, subdivision (b),
23 requires the facility to maintain and follow a written plan governing its waste analysis.

24 80. On and/or before June 23, 2005, Sunbank had not prepared an adequate waste
25 analysis and sampling plan. Sunbank's documentation failed to list specific test methods to be
26 used for sampling, failed to have a written procedure for the chain of custody for samples, failed
27 to distinguish between hazardous waste analysis and wastewater analysis which would lead to
28 inaccurate reporting of waste concentrations, failed to require use of a state-certified laboratory

1 for all analyses of wastes, and failed to use the proper EPA test for wastewater analysis.

2 81. Sunbank violated California Code of Regulations, Title 22, sections 66265.13 and
3 67450.3, subdivision (c)(8)(A), in that Sunbank has failed to prepare an adequate waste analysis
4 and sampling plan for wastes treated by the onsite treatment permit-by-rule unit.

5 82. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
6 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
7 violation occurred or continued.

8 ELEVENTH CAUSE OF ACTION

9 (Failure to Provide and Document Employee Training)

10 (Cal. Code Regs., tit. 22, § 66265.16)

11 83. Paragraphs 1 through 82 are realleged as if fully set forth herein.

12 84. California Code of Regulations, Title 22, section 66265.16 requires facility owners
13 or operators to ensure that their personnel complete a program of training that teaches them to
14 perform their duties in a way that ensures facility compliance with the HWCL. That section also
15 requires facility owners or operators to retain documentation showing that such training is
16 actually provided. (See Cal. Code Regs., tit. 22, § 66265.16, subs. (d) & (e).)

17 85. On and/or prior to June 23, 2005, Sunbank violated California Code of Regulations,
18 Title 22, section 66265.16 by failing to have a written description of the type and amount of
19 continuing training to be given to its Environmental Health and Safety Coordinator, by failing to
20 document the provision of such training, and by failing to have employee job descriptions.

21 86. Pursuant to section 25189, subdivision (b), and section 25189.2, subdivision (b),
22 DTSC is entitled to penalties for said violations of up to \$25,000 for each day during which each
23 violation occurred or continued.

24 REQUEST FOR RELIEF

25 DTSC requests that the Court grant the following relief:

26 I. Enter judgment that Sunbank has violated the HWCL as described in the First
27 through Eleventh Causes of Action;

28 II. Enter judgment that Sunbank is liable for civil penalties for those violations as

1 authorized by Health and Safety Code section 25189 or, in the alternative, by Health and Safety
2 Code section 25189.2, according to proof;

3 III. Enter temporary restraining orders, preliminary injunctions, permanent injunctions,
4 or other order requiring Sunbank to comply with the applicable permits, the HWCL and/or the
5 regulations adopted thereunder;

6 IV. Grant DTSC its costs of suit herein; and

7 V. Grant such other and further relief as the Court deems just and proper.

8
9 Respectfully submitted,

10 EDMUND G. BROWN JR.
11 Attorney General of the State of California
12 JAMES HUMES
13 Chief Deputy Attorney General
14 THOMAS GREENE
15 Chief Assistant Attorney General
16 SALLY MAGNANI KNOX
17 Supervising Deputy Attorney General
18 ROSE B. FUA
19 Deputy Attorney General

20 Original signed by Laura J. Zuckerman
21 LAURA J. ZUCKERMAN
22 Deputy Attorney General

23 Attorneys for Plaintiff PEOPLE OF THE
24 STATE OF CALIFORNIA *ex rel.* Maureen
25 Gorsen, Director, California Department of
26 Toxic Substances Control
27
28

3-14-07 Sunbank Complaint.wpd

EXHIBIT B

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State of California *ex rel.* Maureen Gorsen,
11 Director, Department of Toxic Substances Control

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN LUIS OBISPO
15

16 **PEOPLE OF THE STATE OF CALIFORNIA *ex***
***rel.* Maureen Gorsen, Director, Department of**
17 **Toxic Substances Control,**

18 Plaintiff,

19 v.

20 **JOSLYN SUNBANK COMPANY LLC,**
a California Corporation,

21 Defendant.
22

Case No.: CV 070208

**[PROPOSED] FINAL
JUDGMENT AND PERMANENT
INJUNCTION PURSUANT TO
STIPULATION**

23
24 Plaintiff the People of the State of California *ex rel.* Maureen Gorsen, Director of the
Department of Toxic Substances Control ("Plaintiff" or the "Department") and Defendant Joslyn
25 Sunbank Company LLC ("Defendant" or "Sunbank"), having consented to the entry of this Final
26 Judgment and Permanent Injunction Pursuant to Stipulation ("Final Judgment") prior to the
27 taking of any proof and without a trial or adjudication of any fact or law herein; and
28

The Court having considered the pleadings, which consist of the Complaint, the parties'

1 Stipulation for Entry of Final Judgment and Permanent Injunction, and the proposed Final
2 Judgment and Permanent Injunction Pursuant to Stipulation; and good cause appearing therefor,

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

4 **JURISDICTION AND VENUE**

5 1. Jurisdiction exists over this matter pursuant to Health & Safety Code sections
6 25181, 25189, and 25189.2. Venue is proper pursuant to Health & Safety Code section 25183.

7 **APPLICABILITY**

8 2. The provisions of the Final Judgment, and the underlying Stipulation for Entry of
9 Final Judgment and Permanent Injunction (which is attached hereto as Exhibit 1 and
10 incorporated by reference), shall apply to and be binding on Defendant, its subsidiaries and
11 divisions, its parent companies, its officers and directors, its agents, employees, contractors,
12 consultants, successors, assignees, and representatives, and all persons, partners, corporations
13 and successors thereto, or other entities, acting by, through, under, or on behalf of Defendant, and
14 upon Plaintiff and any successor agency of Plaintiff that may have responsibility for and
15 jurisdiction over the subject matter of this Final Judgment.

16 **INJUNCTION**

17 3. The Enjoined Parties (which include Defendant, its subsidiaries and divisions, its
18 officers and directors, its agents, employees, contractors, consultants, successors, assignees, and
19 representatives, and all persons, partners, corporations and successors thereto, or other entities,
20 acting by, through, under, or on behalf of Defendant), pursuant to Health and Safety Code
21 sections 25181 and 25184, shall do the following:

22 (a) Assess and certify hazardous waste treatment tank units every five years,
23 or prior to expiration of the current service life certification, whichever is shorter, as required by
24 Cal. Code Regs, tit. 22, § 66265.192, subd. (h)(1), and this paragraph.

25 (b) Repair or replace any tank component or tank ancillary equipment that
26 shows signs of compromised integrity, inadequate seismic anchoring, damage, or corrosion
27 within 30 days of deficiency observation, as required by Cal. Code Regs, tit. 22, §§ 66265.192,
28 66265.196, and this paragraph. In the event of such deficiency observation, Sunbank shall

1 immediately take this equipment out of service until repaired or replaced, as required by Cal.
2 Code Regs, tit. 22, § 66265.196 and this paragraph.

3 (c) Refrain from any on-site treatment of hazardous waste except in the
4 manner specified by Health and Safety Code section 25201 and this paragraph as follows:

5 (1) Refrain from treating cyanide filters or other cyanide waste without
6 appropriate authorization from, and except in a manner expressly approved by, the Department.

7 As of March 15, 2007, the Department has not authorized Sunbank to treat cyanide waste on-site.

8 (2) Refrain from treating other plating operations waste without on-site
9 treatment authorization from the Department or the Certified Unified Program Agency
10 (“CUPA”), as appropriate.

11 (d) Sunbank shall avoid accumulating chemical wastes, including long- or
12 short-term crystal formation and liquid storage, in, below, or around floorboards, as required by
13 this paragraph. In addition, Sunbank shall do the following:

14 (1) Clean up any leak or spill when it occurs, as required by Cal. Code
15 Regs, tit. 22, § 66265.31 and this paragraph;

16 (2) Clean plating floors at least once weekly, and include in both the
17 training plan and operating procedures the method and process for cleaning the floor weekly;

18 (3) Treat or store plating floor washdown water and ship accumulated
19 washdown water off-site within 90 days of generation as authorized under the HWCL; and

20 (4) Within ninety (90) days after the entry of the Final Judgment,
21 install improvements in locations identified in Exhibit C to the Stipulation for Entry of Final
22 Judgment and Permanent Injunction, which is attached and incorporated by this reference. The
23 improvements to be installed are designed to minimize and, until cleaned up, contain, leaks,
24 drips, or spills of plating chemical solutions to the floor. The improvements are as follows:

25 (i) Install an additional flowing rinse tank on plating tank #20
26 in Exhibit C and replace the flowing rinse tank on plating tank #25 in Exhibit C;

27 (ii) Install drip pan(s) under the A-frame(s), with accumulated
28 drainage to be diverted or pumped regularly to either a floor sump or directly to a rinse tank

1 discharge pipe;

2 (iii) Improve plating procedures to allow greater drainage time
3 over plating tanks; and

4 (iv) Install drain boards or their equivalent along working sides
5 of plating tanks that would allow any drag out or draining plating liquids to fall along the inner
6 wall of the drain boards and back into plating tanks.

7 (e) Keep all hazardous wastes in compatible containers or tanks in good
8 condition, properly labeled and securely closed when not filling or emptying, as required by Cal.
9 Code Regs, tit. 22, §§ 66262.34, subd. (f), 66265.171, 66265.173, subd. (a), 66265.194, and this
10 paragraph.

11 (f) Keep any and all incompatible hazardous wastes in separate secondary
12 containment areas, as required by Cal. Code Regs, tit. 22, §§ 66265.193, 66265.199, and this
13 paragraph.

14 (g) Inspect all hazardous waste pipes and tanks daily, and record inspections,
15 including under floorboards, in the wastewater treatment unit, and any other area where
16 hazardous waste is accumulated, treated, or piped, as required by Cal. Code Regs, tit. 22, §
17 66265.195 and this paragraph. Sunbank shall conduct and record such inspections daily, using
18 an inspection log in the form the Department approved in 2005, or install, monitor, and maintain
19 a leak detection system in all applicable areas in lieu of conducting and recording such pipe and
20 tank inspections.

21 (h) Maintain berms, dikes, or walls used to segregate incompatible waste
22 streams in all applicable areas, as required by Cal. Code Regs, tit. 22, § 66265.199 and this
23 paragraph. Should such segregation mechanisms show any evidence of failure and/or
24 compromise, Sunbank shall repair or replace such berms, dikes, and/or walls within 14 days,
25 during which time the affected area will be shut down temporarily, rerouted, or otherwise
26 operated to minimize the chance of incompatible materials mixing until adequate repairs or
27 replacements are made, as required by Cal. Code Regs, tit. 22, § 66265.196 and this paragraph.

28 (i) Maintain existing secondary containment mechanisms for all tanks and

1 tank ancillary equipment, as required by Cal. Code Regs, tit. 22, § 66265.193 and this paragraph.
2 In order to ensure that any leak or spill from any hazardous waste source is adequately contained,
3 Sunbank shall immediately remove (and properly handle) any leaked or spilled material from
4 secondary containment, and remove from service any tank or ancillary equipment for which
5 secondary containment has become structurally compromised until necessary repairs and/or
6 replacements have been made, as required by Cal. Code Regs, tit. 22, § 66265.196 and this
7 paragraph.

8 (j) Follow all timelines and procedures established in the current waste
9 analysis and sampling plan for all wastes handled, accumulated, and treated on-site, as required
10 by Cal. Code Regs, tit. 22, § 66265.13 and this paragraph.

11 (k) Adhere to the current established written training plan mandating training
12 content and frequency for each employee, as required by Cal. Code Regs, tit. 22, § 66265.16 and
13 this paragraph. In addition, Sunbank shall update this training plan within 30 days in the event of
14 a process change, change in employee job specification, or other element which could affect the
15 duties of the personnel responsible for handling the facility's hazardous waste.

16 (l) Allow the Department or the local CUPA to inspect the facility at any time
17 during normal business hours without a warrant under Health & Saf. Code, § 25185, subd. (a).
18 This requirement shall be in effect for a period of five years from the date of entry of the Final
19 Judgment.

20 (m) Maintain and make available to the Department or the CUPA for
21 inspection, for five years from the date of entry of the Final Judgment, a log of (1) floor cleaning
22 (as outlined in subsection (d) above), including estimated volume of washdown water
23 accumulated and information on the management and disposal of that washdown water; and (2)
24 filter maintenance, filter management, and disposal, including dates and manifest numbers
25 documenting disposal, as required by Health & Saf. Code, § 25185, subd. (a)(4) and this
26 paragraph.

27 **MONETARY SETTLEMENT REQUIREMENTS**

28 4. Defendant shall pay Plaintiff the sum of Four Hundred, Ninety-Five Thousand

1 Dollars (\$495,000), in settlement of Plaintiff's claims, as follows:

2 (a) The sum of \$485,000, as and for civil penalties, in two payments. The
3 first payment of \$240,000 is due to Plaintiff within thirty (30) days of entry of Final Judgment,
4 but in any event no later than March 31, 2007. The second and final payment of \$245,000 is due
5 to Plaintiff on or before March 31, 2007. These payments for civil penalties and costs under the
6 Final Judgment shall be made by cashier's check, payable to the California Department of Toxic
7 Substances Control, and mailed to:

8 Cashier
9 Accounting Office
10 Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806.

11 The checks shall bear on their face the phrase "DTSC # HWCA 2005-0946."

12 (b) The sum of \$10,000, in the form of a supplemental environmental project,
13 is due and shall be paid within thirty (30) days of the entry of Final Judgment, but in any event no
14 later than March 31, 2007, by a cashier's check made out to the "Western States Project." This
15 check shall be mailed to:

16 Mr. Tom Fahey
17 Western States Project
1275 West Washington
18 Phoenix, AZ 85007

19 The check shall bear on its face the phrase "Cal. DTSC # HWCA 2005-0946."

20 A photocopy of all checks and payments made pursuant to the Final Judgment shall be
21 sent, at the same time, to

22 Charles A. McLaughlin, Chief
23 State Oversight and Enforcement Branch
Statewide Compliance Division
24 Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

25 Vivian Murai, Staff Counsel
26 Office of Legal Counsel
Department of Toxic Substances Control
27 1001 I Street, MS-23A
P.O. Box 806
28 Sacramento, CA 95812-0806
E-mail: vmurai@dtsc.ca.gov

1 and to

2 Laura Zuckerman
3 Deputy Attorney General
4 State of California Department of Justice
5 Attorney General's Office
6 1515 Clay Street, 20th Floor
7 Oakland, CA 94612
8 E-mail: laura.zuckerman@doj.ca.gov

9 Copies sent to Vivian Murai and Laura Zuckerman may be electronic (i.e., Adobe PDF) copies
10 rather than paper copies.

11 **OTHER PROVISIONS**

12 5. **Retention of Jurisdiction.**

13 The Court shall retain jurisdiction of this matter to implement the Final Judgment.

14 6. **Enforcement of Judgment.**

15 Any party may, by motion or order to show cause before the Superior Court of San Luis
16 Obispo County, enforce the terms and conditions contained in this Final Judgment. Where a
17 failure to comply with this Final Judgment constitutes future violations of the HWCL, or other
18 laws independent of this Final Judgment and/or alleged in the Complaint, Plaintiff is not limited
19 to enforcement of this Final Judgment, but may seek in another action, subject to satisfaction of
20 any procedural requirements, including notice requirements, whatever fines, costs, fees,
21 penalties, or remedies are provided by law for failure to comply with the HWCL or other laws.

22 7. **Modification.**

23 This Final Judgment may be modified from time to time by express written agreement of
24 the parties, with the approval of the Court, or by an order of this Court in accordance with law.

25 8. **Entry of Judgment.**

26 The Clerk of the Court is ordered to enter this Final Judgment within five (5) days of the
27 date hereof, and to provide the parties with notice of entry of judgment within ten (10) days of

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1 the entry of this Final Judgment.

2 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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5 Dated: _____

Judge of the Superior Court

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EXHIBIT C

PLATING TANKS

